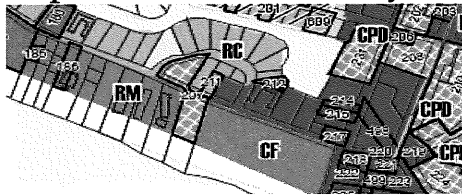


**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Mayor and Town Council
Through: Terry Stewart, Town Manager
CC: Anne Dalton, Town Attorney
From: Frank Shockey, Community Development Director
Date: May 28, 2010
RE: Early draft language for sign ordinance discussion

At the joint LPA and Town Council meeting on May 5, the need to revise the Town's sign ordinance (codified as Land Development Code Chapter 30), was discussed briefly and Council's expectation that this activity be near or at the top of staff and the LPA's priorities was made clear. At the May 11 LPA meeting, members of the LPA had the opportunity to discuss some of the important concepts that are involved in regulating signs after reading some background material. Comments from a prior memo to the LPA on the subject are reprinted here for the benefit of the Town Council.

Signs are speech. What this means is that when a local government regulates signs, the regulations must meet different, higher standards in order to pass muster against a variety of challenges, than do most other forms of land development regulation. A typical land development regulation is afforded deference by courts, but where restrictions on speech, such as sign regulations, are concerned, this is no longer true. This is not an area of regulation in which it would be wise to test the boundaries of what it is permissible to regulate; nor is it an area in which recycling another community's timeworn regulations (under the assumption that those regulations have been challenged and tested) is advisable.

Some of the important concepts to become familiar with are:

- the distinction between commercial and noncommercial speech, and the need to avoid allowing commercial speech in situations in which noncommercial speech is not allowed (i.e. “privileging” commercial speech over noncommercial speech)
- the “content” of speech, and neutrality with regard to content
- the “viewpoint” of speech, and neutrality with regard to viewpoint
- the ideal of a “substantial governmental interest” to be advanced by regulating speech
- the issue of “prior restraint” upon speech
- the problem of giving individuals or boards “unbridled discretion” to approve or deny signs

What we want to achieve by means of the sign ordinance is not more important than ensuring that the ordinance achieves it in a way that will be effective and legally defensible.

Also at the May 11 LPA meeting, a few members of the public came forward to comment prospectively on the notion of altering the Town’s sign ordinance. They expressed a fear that in resolving the current ordinance’s grave problems of methodology, the policy behind the current ordinance would be “opened up” for revision in directions they deemed unfavorable. All members of the public are entitled to their views on what the policy toward signs ought to be, and to express those views. As the sole policy-making body of the Town, the Town Council is the conduit for the public’s views on policy to become manifest in regulations designed to implement that policy. The LPA also hears public comment and has the opportunity to weigh that comment, taking it into account in making a recommendation to the Town Council. In the absence of direction from Town Council to revise policy in the sign ordinance, this new draft attempts to pattern its outcomes as much as possible after the practical effects of the current ordinance. The LPA has the ability to recommend a similar course, or to recommend specific changes to policy if desired.

Although the initial draft of sign ordinance revisions attempts not to alter the policy direction of the current sign ordinance with regard to sign height and the limit to sign area, many changes to the mechanism by which the policy is carried out have been made. In several cases these changes will require that Town Council make new policy decisions about the total sign area to allow for groups of signs of certain types according to the new typology.

Staff seeks direction as to whether Council wishes to (1) hold a public workshop of its own before sending the draft ordinance to the LPA; (2) hold a joint public workshop together with the LPA and then send the draft ordinance to the LPA; or (3) send the draft ordinance to the LPA and allow the LPA to hold public workshops and eventually a hearing, then address policy decisions in the Town Council hearing context afterward.

Staff recommends that both Council and LPA hear as much public input, and provide as much opportunity for public input, as is necessary for the full spectrum of views among interested parties can be represented. A Council workshop, or a joint Council and LPA workshop, either one with an opportunity for public comment, may be the best place to start.